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IN THE

Supreme Court of the United States

OCTOBER TERM, 1944

Nos. 638 and 639

HUNTMAN STABILIZER CORPORATION,
Petitioner,

vs.

GENERAL MOTORS CORPORATION,
Respondent.

BRIEF FOR RESPONDENT

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Statement

In this patent suit, the four patents all issued on August 28, 1934. The construction attacked comprises, in an automobile, the use of an equalizing bar extending from side to side of the automobile, with shock absorbers provided on either side. The Court of Appeals held the first two patents limited in scope and not infringed, and the second pair anticipated by the prior art and invalid (Rec. 593).

On December 21, 1933 plaintiff knew what some of defendant's structures were (Rec. 125); by January 22, 1934 Huntman knew what the constructions of *all* of defendant's cars were (Rec. 131); the correspondence shows that plaintiff continued to consider defendant's constructions down to the bringing of suit (Rec. 125-160). On August 28, 1934 the four patents in suit issued (following Rec. 56a *et seq.*) and consequently plaintiff's cause of action arose at that time. Plaintiff did not bring suit until May 5, 1941 (Rec.

1a) which was more than six and a half years later and during which time defendant had sold nearly six and a half million automobiles containing the devices charged to infringe, and had spent many millions of dollars advertising them (Rec. 321).

Petitioner's statements with respect to the basis of the opinion of the Circuit Court of Appeals for the Third Circuit are not correct, so this brief will largely be directed to pointing out these errors.

ARGUMENT

BASIS OF OPINION OF CIRCUIT COURT OF APPEALS WITH RESPECT TO NON-INFRINGEMENT OF PATENTS NOS. 1,971,957 AND 1,971,958

The Court of Appeals limited the claims of patents Nos. 1,971,957 and 1,971,958 in issue to hydraulically cross connected shock absorbers (i.e., shock absorbers filled with oil and connected by pipes through which the oil is caused to flow) and so not infringed by defendant's mechanical means. Petitioner, in an attempt to show error, lists six points, on pages 7-10 of its petition, which purport to be the basis for the holding of non-infringement of those two patents. Those purported foundations as to why the Court below found no infringement are, according to petitioner:

1. "That the shock absorbers interconnected hydraulically by the cross tubes was the device that Huntman first installed upon a car" (Pet. 7).

2. "That these patents [1,971,957 and 1,971,958]* disappear from the picture unless the claims therein support the granting of the two subsequent patents as part of the field preempted by the application for patent 1,971,957" (Pet. 8).

* Matter in brackets supplied unless otherwise noted.

3. That there is no infringement because the "claims monopolize for the patentee the entire field of the problem, and that to allow patentee now to claim every means for equalizing the strain on both sides of vehicles would allow him to extend his invention to include the prior art" (Pet. 8).

4. "That what the patentee really has offered is an hydraulically connected shock absorbing combination * * *. This is tantamount to saying that the patentee must be limited to the specific exemplifications of his patent specifications * * *" (Pet. 8-9).

5. "That the claims are so broad as to prevent future possible inventions" (Pet. 9).

6. "That the problem Huntman worked on was one common to motor car manufacturers which they were endeavoring to solve. As a ground for limiting the scope of claims this is in conflict with long established precedents" (Pet. 9).

Immediately following the above points, petitioner makes the statement:

"On *these grounds alone** the Circuit Court held these patents not infringed." (Pet. 10).

If the opinion of the Circuit Court of Appeals be examined it will be apparent that it was not on the above "grounds alone" which the first two patents in suit were held limited to hydraulic cross connections and so not infringed by the mechanical torque bars of defendant. The nub and basis for the holding of non-infringement is found at page 591 of the record and is as follows:

"Combining shock absorbers by means of a cross bar would we think have contributed nothing new to the art, neither in mechanism nor function. But hydraulically connecting the old shock absorbers did offer some novelty. To validate '957 therefore this hydraulic connecting limitation must be read into the claim."

* Italics supplied unless otherwise noted.

In view of this part of the opinion, and in view of the fact that the '958 patent is the same as the '957 one, except that it is for a method while the latter is for mechanical structure, there was no error of law or otherwise committed by the Court below, such as would warrant this Court allowing the petition.

Plaintiff's six points (Pet. 7-10), in view of the true ground of the decision relative to infringement of the first two patents, therefore amount to but moot questions.

Petitioner complains that the restriction of the broader claims of the first patent to the hydraulic pipes connecting the shock absorbers on either side is in error in view of its narrower claims and of certain cited cases in this Court (Pet. 21). Yet, in *Westinghouse Co. v. Formica Co.*, 266 U. S. 342, the Court held precisely that, being constrained thereto by the prior art and the absence of any disclosure except the specific one (as here), and notwithstanding the established estoppel to deny validity. It is only when the prior art does not constrain it that the Court will consider differences between broad and narrow claims.

PETITIONER'S STATEMENTS OF THE REASONS THE COURT BELOW HELD PATENTS 1,971,959 AND 1,971,960 INVALID

On pages 10 and 11 of its brief petitioner lists three grounds upon which the Circuit Court of Appeals is alleged to have based its holding of invalidity of the last two patents, 1,971,959 and 1,971,960.

Petitioner's point is that it was error for the Court below to hold these patents invalid "Because they were not applied for until after respondent had announced the appearance of the accused structures" (Pet. 10). This holding is just an added ground of invalidity because the Court immediately before had held those two patents invalid on the prior art patent to Goyne (Rec. 592).

The second point of petitioner is that there is no basis in law for the Court to hold that these patents "cannot be sustained unless they are to be classed as further embodiments of patent 1,971,957" (Pet. 10). This statement demands an inference that is unwarranted by the opinion, for the following quotation from the opinion shows an entirely different meaning:

"The conclusion is that patents '959 and '960 cannot be treated as simply an embodiment of the invention claimed in '957, but must stand on their own feet. Upon the basis of that conclusion, the patents are open to attack on many grounds. One of them is anticipation". (Rec. 591).

The Court then went on to hold them anticipated by Goyne, a prior patent, which was too late to be a statutory bar to the first two patents, but was early enough to be such a bar to the last two, because it was granted more than two years prior thereto (Rec. 592).

In the third point, beginning at the bottom of page 10 of the petition and extending over to the top of the next page, petitioner complains that the Circuit Court found as a fact that Goyne anticipated the last two patents when that was not a fact and when the "District Court did not find this patent to be an anticipation" (Pet. 11).

The findings of the District Court (Rec. 284-8) are silent with respect to the prior art with the exception that patent '959 "is not anticipated and is a novel invention" (Rec. 285)—clearly a conclusion—and likewise as to patent '960 (Rec. 285-6). Since the District Court had made no finding, the Circuit Court was fully justified in making its own, especially when the finding covered only the interpretation of writings, and the testimony of Hunt for respondent about them was unchallenged. If, in patent actions, the ultimate questions of validity and infringement are not open to review in the appellate court there would be little need for appeals.

THE ALLEGED VIOLATION OF RULE 52(a) OF THE FEDERAL RULES OF CIVIL PROCEDURE

In numerous places in the petition and supporting brief are found criticisms of the Circuit Court because allegedly it did not follow the findings of fact of the District Court, and so gave no effect to Rule 52(a) of the Federal Rules of Civil Procedure. In only a few places is anything of a specific nature mentioned. These will be dealt with *seriatim*.

On page 7, petitioner says that the Circuit Court held

“That the shock absorbers interconnected hydraulically by the cross tubes was the device that Huntman *first installed upon a car*” (Rec. 589).

Then petitioner goes on to state:

“This is directly contrary to the finding of the District Court based on undisputed evidence taken in open court that Huntman first installed the cross bar connection early in 1923.”

Substantially the same statements are made in the supporting brief (Pet. bottom 16 and top 17).

The District Court made no finding as to when Huntman *installed* a cross bar connection if ever. What the District Court did find was that “* * * *Huntman, had in the Spring of 1923 experimented* also with another form thereof consisting of a bar which was attached to the shock absorbers on the respective sides” (Finding 4, Rec. 285).

In view of that finding and in view of the fact that there was no documentary corroboration for Huntman’s oral—and highly interested—testimony, the Circuit Court was free to ignore Huntman’s unsupported testimony that he had installed a mechanical cross connection and it could make its own finding with respect to the fact that it was the hydraulic

“* * * device that Huntman first installed upon a car.” (Rec. 589).

On page 8 of the petition, are the statements:

“The District Court found that the claims of patents 1,971,957 and 1,971,958 do not include this indirect effect of the ‘Adex’ linkage. The Circuit Court has shown no error in this finding.”

Later, on page 16 of the brief in support of the petition, it is stated:

“The District Court found that the action of this linkage [Adex] was indirect and was not a physical connection of the shock absorbers and, therefore, outside the scope of the broad claims (Record p. 287). In *its* judgments the Circuit Court ignored this evidence and the findings of fact of the District Court based thereon.” (*Italics in original*)

Petitioner is in error in these statements because the District Court made no finding at page 287 cited with respect to “Adex”, or elsewhere, or with respect to any structure like it (Rec. 284-8).

In its *opinion*, at page 281, the District Court simply said, of Adex, that “the use of such a bar” [the rod to establish lateral stability in automobiles on curves] “where there were also shock absorbers,” appeared prior to Huntman”. This goes far toward establishing the direct opposite of what our adversaries say, and is not affected by the District Court’s further comment that there was “no direct functional relationship between the shock absorbers upon the respective sides” (Rec. 281-2)—whatever that may mean.

Petitioner complains that the Circuit Court held that patents 1,971,959 and 1,971,960 are anticipated by Goyne 1,568,561 (Pet. 10) when

“The District Court did not find this patent to be an anticipation” (Pet. 11).

It is true that Goyne was held by the Court of Appeals to be anticipatory of the last two patents in suit, and that the District Court did not mention it specifically. But that

does not obscure the fact that Goyne is a plain anticipation of the patents, just as the Circuit Court says.

The whole matter comes to this: it was stated by both Courts that Ezell in the prior art had the equalizer bar which connected the springs on opposite sides of the car, which closely resembled Huntman's bar devices (Rec. 278; 586, bottom).

What distinguished the findings of the two Courts was, that the Circuit Court found that the addition of shock absorbers—old in the art as the plaintiff admits (pat. 1,971,957, p. 1, lines 15-20 following p. 56a of the Record)—only made differences due to the presence of the shock absorbers and “not to plaintiff's claimed combination” (Rec. 587). In other words, that there was nothing but aggregation attained by the addition to Ezell's old cross bar of the old shock absorbers.

The District Court's opinion plainly shows that prior to Huntman the use of an equalizer bar to transmit motion from the springs on one side of a vehicle to those on the other was old; also that shock absorbers were old (Rec. 171a). The Circuit Court found that “the plaintiff does not claim to be the inventor either of the shock absorbers or the connecting means” (Rec. 586, near bottom).

This, on the face of the patents, left nothing in the four patents in suit except the use of tubes, or hydraulic connections between the shock absorbers, which was the specific disclosure of the first two patents in suit, and which was not used by defendant. Consequently there is no error where, as here, the findings of the Circuit Court are amply supported by the evidence and are not in conflict with those of the District Court.

Conclusion

It is submitted that the petition should be denied.

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